# An Act

ENROLLED SENATE
BILL NO. 1845

By: Treat of the Senate

and

Martin (Steve) and Bennett of the House

An Act relating to firearms; amending 21 O.S. 2011, Sections 1290.10 and 1290.11, as last amended by Section 2, Chapter 171, O.S.L. 2013 (21 O.S. Supp. 2013, Section 1290.11), which relate to the Oklahoma Self-Defense Act; modifying exception to certain mandatory preclusion; providing exception for certain temporary preclusion; directing court clerks to forward commitment orders to certain entities; directing court clerks to provide certain notice; authorizing petitions for certain relief; providing hearing procedures; requiring service of petition to district attorney; directing court to consider certain evidence; directing court to grant relief upon showing of certain standard of proof; directing court to issue findings of fact and conclusions of law; requiring a record of proceedings be kept and held confidential; providing for appeals upon denial of requested relief; deeming certain adjudication as not having occurred when petition for relief is granted by the court; directing court clerks to forward order of relief to certain entities; directing certain entities to update records; amending 43A O.S. 2011, Section 5-415, as last amended by Section 5, Chapter 217, O.S.L. 2013 (43A O.S. Supp. 2013, Section 5-415), which relates to hearings and orders for involuntary commitments; providing exception to certain records requirements; providing for codification; and providing an effective date.

SUBJECT: Preclusions related to Oklahoma Self-Defense Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1290.10, is amended to read as follows:

Section 1290.10

MANDATORY PRECLUSIONS

In addition to the requirements stated in Section 1290.9 of this title, the conditions stated in this section shall preclude a person from eligibility for a handgun license pursuant to the provisions of the Oklahoma Self-Defense Act~~, Section 1290.1 et seq. of this title~~. The occurrence of any one of the following conditions shall deny the person the right to have a handgun license pursuant to the provisions of the Oklahoma Self-Defense Act. Prohibited conditions are:

1. Ineligible to possess a pistol due to any felony conviction or adjudication as a delinquent as provided by Section 1283 of this title, except as provided in subsection B of Section 1283 of this title;

2. Any felony conviction pursuant to any law of another state, a felony conviction pursuant to any provision of the United States Code, or any conviction pursuant to the laws of any foreign country, provided such foreign conviction would constitute a felony offense in this state if the offense had been committed in this state, except as provided in subsection B of Section 1283 of this title;

3. Adjudication as ~~an~~ a mentally incompetent person pursuant to the provisions of the Oklahoma Mental Health Law, ~~Section 1-101 et seq. of Title 43A of the Oklahoma Statutes~~ or an adjudication of incompetency entered in another state pursuant to any provision of law of that state, unless the person has been granted relief from the disqualifying disability pursuant to Section 3 of this act;

4. Any false or misleading statement on the application for a handgun license as provided by paragraph 5 of subsection A of Section 1290.12 of this title;

5. Conviction of any one of the following misdemeanor offenses in this state or in any other state:

a. any assault and battery which caused serious physical injury to the victim, or any second or subsequent assault and battery conviction,

b. any aggravated assault and battery,

c. any stalking pursuant to Section 1173 of this title, or a similar law of another state,

d. a violation relating to the Protection from Domestic Abuse Act~~, Section 60 et seq. of Title 22 of the Oklahoma Statutes,~~ or any violation of a victim protection order of another state,

e. any conviction relating to illegal drug use or possession~~;~~, or

f. an act of domestic abuse as defined by Section 644 of this title or an act of domestic assault and battery or any comparable acts under the laws of another state;

6. An attempted suicide or other condition relating to or indicating mental instability or an unsound mind which occurred within the preceding ten-year period from the date of the application for a license to carry a concealed firearm or that occurs during the period of licensure;

7. Currently undergoing treatment for a mental illness, condition, or disorder. For purposes of this paragraph, "currently undergoing treatment for a mental illness, condition, or disorder" means the person has been diagnosed by a licensed physician as being afflicted with a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs

judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life;

8. Significant character defects of the applicant as evidenced by a misdemeanor criminal record indicating habitual criminal activity;

9. Ineligible to possess a pistol due to any provision of law of this state or the United States Code, except as provided in subsection B of Section 1283 of this title;

10. Failure to pay an assessed fine or surrender the handgun license as required by a decision by the administrative hearing examiner pursuant to authority of the Oklahoma Self-Defense Act;

11. Being subject to an outstanding felony warrant issued in this state or another state or the United States; or

12. Adjudication as a delinquent as provided by Section 1283 of this title, except as provided in subsection B of Section 1283 of this title.

SECTION 2. AMENDATORY 21 O.S. 2011, Section 1290.11, as last amended by Section 2, Chapter 171, O.S.L. 2013 (21 O.S. Supp. 2013, Section 1290.11), is amended to read as follows:

Section 1290.11

OTHER PRECLUSIONS

A. The following conditions shall preclude a person from being eligible for a handgun license pursuant to the provisions of the Oklahoma Self-Defense Act for a period of time as prescribed in each of the following paragraphs:

1. An arrest for an alleged commission of a felony offense or a felony charge pending in this state, another state or pursuant to the United States Code. The preclusive period shall be until the final determination of the matter;

2. The person is subject to the provisions of a deferred sentence or deferred prosecution in this state or another state or

pursuant to federal authority for the commission of a felony offense. The preclusive period shall be three (3) years and shall begin upon the final determination of the matter;

3. Any involuntary commitment for a mental illness, condition, or disorder pursuant to the provisions of Section 5-410 of Title 43A of the Oklahoma Statutes or any involuntary commitment in another state pursuant to any provisions of law of that state. The preclusive period shall be permanent as provided by Title 18 of the United States Code Section 922(g)(4) unless the person has been granted relief from the disqualifying disability pursuant to Section 3 of this act;

4. The person has previously undergone treatment for a mental illness, condition, or disorder which required medication or supervision as defined by paragraph 7 of Section 1290.10 of this title. The preclusive period shall be three (3) years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person is either no longer disabled by any mental or psychiatric illness, condition, or disorder or that the person has been stabilized on medication for ten (10) years or more;

5. Inpatient treatment for substance abuse. The preclusive period shall be three (3) years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person has been free from substance use for twelve (12) months or more preceding the filing of an application for a handgun license;

6. Two or more convictions of public intoxication pursuant to Section 8 of Title 37 of the Oklahoma Statutes, or a similar law of another state. The preclusive period shall be three (3) years from the date of the completion of the last sentence;

7. Two or more misdemeanor convictions relating to intoxication or driving under the influence of an intoxicating substance or alcohol. The preclusive period shall be three (3) years from the date of the completion of the last sentence or shall require a certified statement from a licensed physician stating that the person is not in need of substance abuse treatment;

8. A court order for a final Victim Protection Order against the applicant, as authorized by the Protection from Domestic Abuse Act, or any court order granting a final victim protection order against the applicant from another state. The preclusive period shall be three (3) years from the date of the entry of the final court order, or sixty (60) days from the date an order was vacated, canceled or withdrawn;

9. An adjudicated delinquent or convicted felon residing in the residence of the applicant which may be a violation of Section 1283 of this title. The preclusive period shall be thirty (30) days from the date the person no longer resides in the same residence as the applicant; or

10. An arrest for an alleged commission of, a charge pending for, or the person is subject to the provisions of a deferred prosecution for any one or more of the following misdemeanor offenses in this state or another state:

a. any assault and battery which caused serious physical injury to the victim or any second or subsequent assault and battery,

b. any aggravated assault and battery,

c. any stalking pursuant to Section 1173 of this title, or a similar law of another state,

d. any violation of the Protection from Domestic Abuse Act or any violation of a victim protection order of another state,

e. any violation relating to illegal drug use or possession, or

f. an act of domestic abuse as defined by Section 644 of this title or an act of domestic assault and battery or any comparable acts under the law of another state.

The preclusive period shall be until the final determination of the matter. The preclusive period for a person subject to the provisions of a deferred sentence for the offenses mentioned in this

paragraph shall be three (3) years and shall begin upon the final determination of the matter.

B. Nothing in this section shall be construed to require a full investigation of the applicant by the Oklahoma State Bureau of Investigation.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1290.27 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. When a court adjudicates a person mentally incompetent or orders the involuntary commitment of a person due to a mental illness, condition or disorder under the laws of this state by which a person becomes subject to the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, the clerk of the court shall forward a certified copy of the order or adjudication to the Federal Bureau of Investigation or its successor agency for the sole purpose of inclusion in the National Instant Criminal Background Check System database and to the Oklahoma State Bureau of Investigation. The clerk of the court shall also notify the person of the prohibitions contained within the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes.

B. When a court adjudicates a person mentally incompetent or orders the involuntary commitment of a person due to a mental illness, condition or disorder under the laws of this state by which a person becomes subject to the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes, or when a person is otherwise disqualified from eligibility for a handgun license under paragraph 6 or 7 of Section 1290.10 of Title 21 of the Oklahoma Statutes or paragraph 4 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes, the person may petition the court in which the adjudication or commitment proceedings occurred or the district court of the county in which the person currently resides to remove the disability.

C. On filing of the petition, the court shall set a hearing. Not less than thirty (30) days prior to a hearing on the matter, a copy of the petition for relief shall be served upon the district attorney for that county. The court shall receive and consider evidence in a closed hearing.

D. The court shall receive evidence on and consider the following before granting or denying the petition:

1. Psychological or psychiatric evidence from the petitioner and in support of the petition;

2. The circumstances that resulted in the firearm disabilities;

3. The petitioner's criminal history records provided by the state, if any;

4. The petitioner's mental health records;

5. The reputation of the petitioner based on character witness statements, testimony or other character evidence;

6. Whether the petitioner is a danger to self or others;

7. Changes in the condition or circumstances of the petitioner since the original adjudication of mental incompetency or involuntary commitment for a mental illness, condition or disorder relevant to the relief sought; and

8. Any other evidence deemed admissible by the court.

E. The court shall grant the relief requested if the petitioner proves by clear and convincing evidence that:

1. The petitioner is not likely to act in a manner that is dangerous to the public safety; and

2. Granting the relief requested is not contrary to the public interest.

F. At the conclusion of the hearing, the court shall issue findings of fact and conclusions of law. A record shall be kept of

the proceedings, but shall remain confidential and be disclosed only to a court or the parties. No records of the proceedings pursuant to this subsection shall be open to public inspection except by order of the court or to a person's attorney of record. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo.

G. If the court grants the petition for relief, the original adjudication of mental incompetency or order of involuntary commitment due to a mental illness, condition or disorder of the petitioner is deemed not to have occurred for purposes of applying Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3, 6 or 7 of Section 1290.10, or paragraph 3 or 4 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes.

H. The clerk of the court shall promptly forward to the Federal Bureau of Investigation or its successor agency for the sole purpose of inclusion in the National Instant Criminal Background Check System database and the Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation, a certified copy of the order granting relief under this section. The Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation shall as soon thereafter as is practicable, but in no case later than ten (10) business days, update, correct, modify, or remove the record of the person in any databases that these agencies use or refer to for the purposes of handgun licensing, or make available to the National Instant Criminal Background Check System and notify the United States Attorney that the basis for such record being made available no longer applies.

SECTION 4. AMENDATORY 43A O.S. 2011, Section 5-415, as last amended by Section 5, Chapter 217, O.S.L. 2013 (43A O.S. Supp. 2013, Section 5-415), is amended to read as follows:

Section 5-415. A. Upon receiving a petition alleging a person to be a person requiring treatment, the court shall set a day and time for the hearing.

1. If the person alleged to be a person requiring treatment does not have an attorney, the court shall immediately appoint an attorney for the person.

2. If a copy of a mental health evaluation is not attached to the petition at the time it is filed, the court shall immediately order a mental health evaluation of the person as provided by Section 5-414 of this title.

B. If the court deems it necessary, or if the person alleged to be a person requiring treatment demands, the court shall schedule the hearing on the petition as a jury trial to be held within one hundred twenty (120) hours or five (5) days of the demand, excluding weekends and holidays, or within as much additional time as is requested by the attorney of such person upon good cause shown.

C. The court, at the hearing on the petition, shall determine by clear and convincing evidence whether the person is a person requiring treatment.

1. The court shall take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the consumer's right to refuse medication.

2. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits of the licensed mental health professionals who evaluated the person and the mental health evaluation.

3. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.

D. After the hearing, when the court determines that the person is not a person requiring treatment, the court shall dismiss the petition and, if the person is being detained, order the person to be discharged from detention.

E. After the hearing, when the court determines the person to be a person requiring treatment, the court shall order the person to receive the least restrictive treatment consistent with the treatment needs of the person and the safety of the person and others.

1. The court shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization and may direct the submission of evidence as to the least restrictive treatment alternative or may order a mental health examination.

2. If the court finds that a program other than hospitalization is appropriate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization that is appropriate for a period set by the court, during which time the court shall continue its jurisdiction over the individual as a person requiring treatment.

3. If the court orders the person to be committed for involuntary inpatient treatment, the court shall commit the person to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.

4. The person shall be delivered to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.

5. If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such facility, the Department shall attempt, if administratively possible, to comply with the preference.

6. The person shall be discharged from inpatient treatment at such time as the person no longer requires treatment as determined

by the executive director of the facility or the designee of the executive director, or as otherwise required by law.

F. The court shall make and keep records of all cases brought before it.

1. ~~No~~ Except as provided in Section 3 of this act, no records of proceedings pursuant to this section shall be open to public inspection except by order of the court or to employees of the Department of Mental Health and Substance Abuse Services, the person's attorney of record, the person's treatment advocate as defined pursuant to Section 1-109.1 of this title, if any, a person having a valid power of attorney with health care decision-making authority, a person having valid guardianship with health care decision-making authority, a person having an advance health care directive, a person having an attorney-in-fact as designated in a valid mental health advance directive or persons having a legitimate treatment interest, unless specifically indicated otherwise by the instrument or court order. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder.

2. Bonded abstractors may be deemed to be persons having a legitimate interest for the purpose of having access to records regarding determinations of persons requiring treatment under this section.

SECTION 5. This act shall become effective July 1, 2015.

Passed the Senate the 5th day of May, 2014.

Presiding Officer of the Senate

Passed the House of Representatives the 10th day of April, 2014.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 6th day of May, 20 14, at 11:00 o'clock A M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 9th day of May, 20 14, at 10:56 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 9th day of May, 20 14, at 1:53 o'clock P. M.

By: Chris Benge